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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/644,380

08/23/2000

Floyd H. Chilton

1698

21586 7590 01/11/2006

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EXAMINER

KIM, JENNIFER M

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/644,380

Applicant(s)

CHILTON, FLOYD H.

Examiner

Jennifer Kim

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/3/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed October 3, 2005 have been received and entered into the application.

Action Summary

The rejection of claims 52-55 under 35 U.S.C. 112, second paragraph is hereby expressly withdrawn in view of Applicants' amendment.

The rejection of claims 52-55 under 35 U.S.C. 103(a) as being unpatentable over DeMichele et al. (5,223,285) in view of Igarashi et al. (EP 782827) and Kahn et al. (4,154,863) is being maintained for the reasons stated in the previous Office Action.

Response to Arguments

Applicant's arguments filed October 3, 2005 have been fully considered but they are not persuasive. Applicant argue that the nutritional composition represented by Blend C in Table 2 of DeMichele et al. comprises PULMOCARE containing canola oil, corn oil, high oleic safflower oil and medium chain triglyceride oil which is readily distinguished from the oils in the presently claimed dietary supplement. The is not persuasive because the claims are drawn to same technical formulation of nutritional and dietary supplement

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that that Applicants' have not presented any data that the presence of PULMOCARE in the prior art would materially affect the basic and novel characteristics of the claimed invention because the resulting composition would still have the same basic and novel characteristic in that it would still effective as a "dietary supplement". Applicants argue that Table 2 of DeMichele et al. discloses a nutritional composition containing 40% weight percent of fish oil and borage oil but this is a misreading because Table 2 Borage oil and fish oil make up 40% by weight of the lipid blend, not 40% by weight of the nutritional composition. This is not persuasive because the amounts of active agents to be used deemed obvious since they are all within the knowledge of the skilled pharmacologist once the usefulness of a compound is known to be useful in nutritional supplement, it is within the skill of the artisan to determine the optimum ratio. There is lack of data showing that the specified amount of specified oil employed in the present Application having surprising and unexpected result. Thus, the claims fail to patentably distinguish over the state of the art as represented by the cited references.

None of the claims are allowed.

In view of the above Office Action of June 1, 2005 is deemed proper and asserted with full force and repeated to obviate applicants' claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

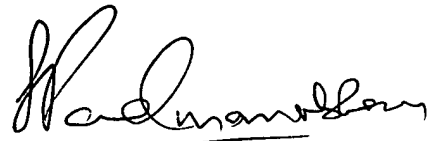
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'S. Padmanabhan', with a stylized, cursive script.

Sreenivasan Padmanabhan
Supervisory Examiner
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Jmk
January 9, 2006